

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**MEDTECH PRODUCTS INC.,**

**Plaintiff,**

**V.**

**RANIR, LLC and  
CVS PHARMACY, INC.**

**Defendant.**

**MEDTECH PRODUCTS INC.,**

**Plaintiff,**

**V.**

**DENTEK ORAL CARE, INC.,**

**Defendant.**

**MEDTECH PRODUCTS INC.,**

**Plaintiff,**

**V.**

**POWER PRODUCTS, INC.**

**d/b/a SPLINTEK,**

**Defendant.**

**Civil Action No. 07 CV 3302-UA-LMS**

**PLAINTIFF’S REPLY IN SUPPORT OF  
ITS MOTION FOR LEAVE TO FILE  
ITS AMENDED COMPLAINT  
AGAINST DENTEK ORAL CARE, INC.**

**ECF FILED**

In its Opposition to Plaintiff’s Motion for Leave to File an Amended Complaint (“DenTek’s Opposition”), DenTek Oral Care, Inc. (“DenTek”) feigns surprise at Medtech’s Motion for Leave to File Its Amended Complaint (“Motion to Amend”). DenTek’s submission, however, provides no legally cognizable reason to disallow Medtech’s Amended Complaint. So

that this case can move toward a resolution, Medtech respectfully requests that this Court address the Motion to Amend as expeditiously as its schedule permits.

DenTek claims that the Amended Complaint “transforms” this action into a new case. *See* DenTek’s Opposition, p. 2. For all the broad-reaching language of DenTek’s Opposition, the Proposed Amended Complaint simply adds a defendant, and several claims that are closely related to DenTek’s knock-off product, advertising, and instructions. DenTek even admits that at the time of the meet and confer—which took place at the same time as the Scheduling Conference before Judge Briant—“**Medtech told DenTek** that it was considering adding Ms. Kaplan.” *Id.* at pp. 2-3 (emphasis added). There is no surprise or sudden expansion of this case.

Not only were Medtech’s intentions to amend fully disclosed, Medtech’s motion also is timely under the parties’ agreement. DenTek agreed that the parties would have until June 15, 2007 to file amended pleadings and join additional parties. *See id.* at p. 2. Medtech’s Motion to Amend was filed on June 6, 2007, and therefore was well within the agreed-upon deadline.

Finally, the standards under which timely pleading amendments are allowed are intentionally broad. While DenTek correctly summarizes the law, it does not apply any of the narrow circumstances under which an amendment is denied. Instead, DenTek attempts to impose unilateral “conditions” that have no basis in the law. As to DenTek’s complaints that discovery will be impossibly broad, these claims are shown meritless by its own expansive discovery. DenTek has already served 145 document requests on Medtech that cover virtually every facet of the NIGHTGUARD™ brand dental protector at issue in this case. DenTek has determined to make discovery broad in this case, regardless of the amendment. DenTek’s request that the case be held in abeyance simply underscores that the intent of DenTek’s Opposition is to delay the adjudication of this matter based on DenTek’s rhetoric.

Accordingly, Medtech's Motion to Amend should be GRANTED.

Dated: June 22, 2007

Respectfully submitted,

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